

(2013) 08 P&amp;H CK 0726

## High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 137 of 2012 (O and M)

Bharat Sanchar Nigam Limited

APPELLANT

Vs

Sanjay Garg

RESPONDENT

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**Date of Decision:** Aug. 5, 2013**Acts Referred:**

- Arbitration and Conciliation Act, 1996 - Section 8

**Hon'ble Judges:** Rakesh Kumar Garg, J**Bench:** Single Bench**Advocate:** Anil Rathee, for the Appellant; Pawan Kumar with Mr. Anshuman Mandher, for the Respondent**Final Decision:** Dismissed

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**Judgement**

Rakesh Kumar Garg, J.

This is tenant's revision petition challenging the order dated 6.5.2011 of the Rent Controller, Ambala, ordering its eviction from the premises in dispute and the judgment dated 3.12.2011 of the Appellate Authority, whereby its appeal was dismissed against the aforesaid order of eviction. The respondent-landlord had filed an eviction petition against the petitioner, alleging that the petitioner was a tenant in the premises in dispute at a monthly rent of Rs. 20,000/- excluding electricity, water and house tax etc. and the petitioner-tenant was liable to be ejected from the demised premises on the ground of non-payment of rent, bona fide necessity of the respondent-landlord and impairing the value and utility of the building etc.

2. Upon notice, the petitioner filed its reply raising various preliminary objections. On merits, relationship of landlord and tenant was admitted. It was further stated that as per the agreement dated 18.7.2002, the petitioner is a tenant of the respondent-landlord at monthly rent of Rs. 8000/- per month excluding electricity charges. All the taxes were to be paid by the landlord. The petitioner was paying rent regularly in time through cheques which have been encashed. The petitioner

was also not in arrears of rent and had not made any alteration or damage to the flooring of the whole building. It was stated that the allegations are concocted and false. A further plea was taken that as per Clause 17 of the agreement dated 18.7.2002, it was settled between the parties that in case of any dispute, doubt or difference, matter shall be referred to sole arbitration of the Member Service, Department of Telecommunication, BSNL, GMT, Ambala. The landlord has not approached the Arbitrator as per agreement. The other averments were denied and dismissal of the petition was prayed.

3. From the pleadings of the parties, following issues were framed:-

1. Whether the respondent is liable to be evicted on the grounds as mentioned in the petition? OPP

2. Whether the petition is not maintainable in the present form? OPR

3. Relief.

4. After considering the evidence on record, the Rent Controller held that the respondent-landlord has failed to prove that the petitioner was in arrears of rent and that the petitioner has impaired the value and utility of the property in dispute. However, the ground of personal necessity of the landlord was held to be proved. Thus, it was held that the respondent-landlord was entitled to eviction of the petitioner on the ground of bona fide need and personal necessity. In view of the aforesaid discussion, the rent petition was held to be maintainable and eviction of the petitioner was ordered from the premises in dispute.

5. Appeal filed by the petitioner was also dismissed by the Appellate Authority vide impugned judgment dated 3.12.2011. While dismissing the appeal, the Appellate Authority observed as under:-

12. The petitioner sought the eviction of the tenant from the demised premises on the grounds of personal needs. This version was denied as being wrong by the tenant. In this regard, besides the testimony of the petitioner as AW1, there is a testimony of Suraj Parkash as AW2. Despite extensive cross-examination, the testimony of either of the witness could not be shattered in any manner. Though it has been argued on behalf of the appellant - tenant that the landlord is residing with his father and he is not in need of the demises premises but the plea taken in this regard is devoid of merit. It is well settled that the landlord is the best judge of his bonafide need and the same is to be seen from his angle and not from the point of the tenant. A reference in this regard has been made to the ratio of law laid down in case [Pawan Kumar Mittal Vs. Girdhari Lal Saroya](#), Rent Controller Reporter 692. Then, in case of [Satpal Vijay Kumar Vs. Sushil Kumar](#), Rent Control Reporter 160, it was held by the Hon'ble Punjab & Haryana High Court that when the eviction is sought on the grounds of bonafide needs then, the Rent Controller shall not proceed on assumptions that the requirement is not bonafide. If the landlord states

that he needs the demised premises for his bonafide need, then the same should always be presumed as correct and genuine. It is not the case of the appellant-tenant that besides the premises in dispute, the landlord has any other property. Moreover, it is proved that the demised property was taken on rent by the appellant - tenant vide lease agreement (copy) Ex.A1 for a period of five years and after its expiry, it became a statutory tenant and is entitled to seek its ejectment on the grounds of bonafide needs and which is proved from his statement as well as the statement of Suraj Parkash AW2.

13. Faced with this situation, the learned counsel for the appellant - tenant argued that before filing the eviction petition, neither the tenancy was terminated nor any notice in this regard was received. But again the plea advanced in this regard is devoid of merit. While leading evidence, the respondent-landlord placed on file copy of notice Ex.A2 duly sent to the tenant vide registered letter (postal receipt) Ex.A3 and received vide acknowledgement due Ex.A4. Then, vide writing Ex.A5 to Shri Mangal Sen Goyal, Advocate, the receipt of notice dated 28.11.2006 was admitted. Even Shri Mahender Singh Chauhan RW1 admitted the receipt of that notice and sending its reply. So, all these facts prove beyond doubt that before filing the eviction petition, the tenancy of the tenant was terminated by the landlord by issuance of notice.

14. Lastly, the learned counsel for the appellant-tenant took a plea that vide agreement of lease Ex.A1, the matter in dispute between the parties to the dispute was liable to arbitration. For this, he has referred to clause - 17 of that agreement and which provides that in case of any dispute between the parties, the matter was liable to be referred to sole arbitration of the Member Services, Department of Telecommunications, Bharat Sanchar Nigam Limited, Ambala. Since that was not done, so, the eviction petition filed by the landlord is not maintainable and is liable to be rejected. But again the plea advanced in this regard is devoid of merit. A perusal of the lease agreement Ex.A1 shows that the same was executed between the parties to the dispute with regard to the demised premises on 18.7.2002 and was valid for a period of five years w.e.f. 16.12.2001. Prior to the expiry of that period, the landlord terminated the tenancy of the tenant by giving a notice Ex.A2. Then, a petition for eviction prior to that was filed but the same was got dismissed as withdrawn on 23.5.2007. So, after the expiry of period of lease, the appellant -tenant became a statutory tenant and the matter in dispute for its eviction from the demised premises could not have been referred to the arbitration. So, the petition filed for its eviction from the demised premises is very much maintainable.

6. Still not satisfied, the petitioner-tenant has filed the instant petition, challenging the order of eviction of passed by the authorities below.

7. Learned counsel for the petitioner has vehemently argued that the Courts below have erred in law while holding that the terms and conditions of the agreement dated 18.7.2002 were not applicable and therefore, the Rent Controller had no

jurisdiction to pass the eviction order against the petitioner. According to the learned counsel, as per Clause 17 of the Agreement, the Court was bound to refer the matter for arbitration and the Rent Controller had no jurisdiction to pass an order of eviction against the petitioner. Learned counsel has relied upon judgment of this Court in the case of *Munish Singal & ors. v. BSNL & ors.* Civil Revision No. 4106 of 2011 decided on 7.5.2012 and the judgments of the Hon"ble Supreme Court in the cases of *The [The Branch Manager, Magma Leasing and Finance Limited and Another Vs. Potluri Madhavilata and Another](#)*, and *Bharat Sewa Sansthan v. UP Electronics Corporation Ltd.* 2004(4) RCR (Civil) 98 to contend that in a lease agreement which contains an arbitration clause, the Court must refer the parties to arbitration and the termination of contract will not affect the arbitration clause.

8. On the other hand, learned counsel for the respondent-landlord has relied upon a judgment of this Court in the case of *[Dr. Jasbir Singh Mann Vs. Mrs. Ana Cidaliza Columa Ohri and Others](#)*, to contend that the Arbitration Act is not applicable to the proceedings under the Rent Act and in absence of any agreement between the parties extending the terms of lease, occupation of the tenant over the demised premises after the expiry of the lease agreement, is not under agreement and the provisions of the Rent Act shall apply. Learned counsel has further relied upon a judgment of this Court in the case of *M/s. V.S. Enterprises v. B.R. Sharma* Vol.CLXV -(2012-1) PLR 146.

9. I have heard learned counsel for the parties and perused the judgments produced before this Court.

10. In the case of *Munish Singal & ors.* (supra), on expiry of lease deed, the tenants did not vacate the demised premises and moved an application u/s 8 of the Arbitration and Conciliation Act alleging that the dispute raised in the suit is liable to be referred for arbitration in view of arbitration Clause 17 contained in the lease agreement. The trial Court vide impugned order, allowed the application of the defendant which was upheld by this Court, upholding the order of the trial Court and observed that the issue raised in the suit was covered under the Arbitration Clause contained in the Arbitration Agreement and therefore, application u/s 8 was rightly allowed by the trial Court. Similarly, in the case of *Branch Manager, M/s. Magma Leasing & Finance Ltd. & anr. v. Potluri Madhavilata & anr.* (supra), the question to be determined before the Supreme Court was whether the arbitration agreement survives for the purpose of resolution of disputes arising under or in connection with the contract even if its performance has come to an end on account of termination due to breach and while considering the aforesaid question, the Supreme Court held that where breach of agreement by one of the parties is alleged and the other party terminates the agreement, such termination of contract will not affect the arbitration clause. In the case of *Bharat Sewa Sansthan v. UP Electronics Corporation Ltd.* (supra), the Hon"ble Supreme Court held that the dispute was with regard to quantum of agreement and in those circumstances, the Hon"ble Supreme

Court held that the disputed claim can be appropriately adjudicated upon by the arbitrator in terms of the arbitration clause. Thus, in all the cases, relied upon by the petitioner, the Court was not considering the question as to whether the Rent Controller had the jurisdiction to pass an appropriate order of eviction in case there is an arbitration clause in the agreement, the term of which has already expired.

11. On the other hand, in *M/s. V.S. Enterprises v. B.R. Sharma* (supra), this Court had an occasion to consider a similar argument raised in relation to the provisions of the Rent Act, wherein the Court was of the view that the lease agreement had expired by efflux of time and thus, the dispute between the parties with regard to eviction was not covered by the lease agreement and therefore, such an agreement does not cover the dispute and the trial Court was fully justified in declining to refer the dispute between the parties to arbitration. Similarly, in the case of *Jasbir Singh Mann v. Ana Cidaliza Columna Ohri & ors.* (supra), this Court held that the Rent Controller cannot decline to exercise its power to decide the dispute of ejection simply because the plea with regard to jurisdiction of the arbitrator can be raised before the arbitrator. The Rent Act being a special legislation, has to prevail, especially when the provisions of Section 13 of the Rent Act would bar any other Court from trying an ejection petition. The right to seek ejection flows from the provisions of the Rent Act. Whenever any special enactment is made governing the rights of different parties, such an enactment is bound to prevail. This view finds support from the judgment of the Hon'ble Supreme Court in the case of [Natraj Studios \(P\) Ltd. Vs. Navrang Studios and another](#), wherein while dealing with the provisions of the Arbitration Act, 1940 and that of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, it was observed that public policy requires that contracts, which nullify the rights conferred on a tenant by the Act, cannot be permitted. It was further observed that public policy requires that parties can also not be permitted to contract out of the legislative mandate, which requires their disputes to be settled under the Act by the special Courts constituted by the Act. It was in this context observed that the arbitration agreement between the parties, whose rights are regulated by the Bombay Rent Act, cannot be recognized by a Court of law.

12. In view thereof, I am of the view that after the expiry of the period of lease, the petitioner became a statutory tenant and the matter in dispute, for its eviction from the demised premises, could not have been referred for arbitration and thus, no fault can be found with the findings of the Courts below, to the effect that eviction petition was very much maintainable and the same was not required to be referred to arbitration.

13. Faced with this situation, counsel for the petitioner has vehemently argued that personal need of the respondent-landlord is not proved from the evidence on record, as the respondent was residing with his father and was not in need of the demised premises.

14. It is now well settled that the landlord is the best judge of his bona fide needs and the same has to be seen from his angle and not from the view point of the tenant. The respondent-landlord has specifically pleaded that he requires the demised premises for his own use and occupation, which further corroborated his statement. There is nothing contrary on the record to dislodge the findings of the Courts below on the personal necessity of the respondent-landlord.

15. No other point has been argued.

16. Thus, I find no merit in this petition. Dismissed.